

Senate Bill 147

By: Senators Shafer of the 48th, Balfour of the 9th, Thompson of the 5th and Weber of the 40th

**AS PASSED**

AN ACT

To create the Gwinnett County Storm-water Authority; to authorize the storm-water authority to acquire, construct, add to, extend, improve, operate, and maintain storm-water management systems and facilities, and any and all other related facilities; to confer powers and to impose duties on the storm-water authority; to provide for the members of the storm-water authority and their term of tenure and compensation; to authorize the storm-water authority to contract with others pertaining to the use of the systems and facilities of the storm-water authority and to execute leases and do all things deemed necessary or convenient for the operation of such undertakings or projects; to authorize the issuance of revenue bonds or obligations of the storm-water authority, payable from the revenues, tolls, fees, charges, and earnings of the storm-water authority and to pay the cost of such undertakings or projects and to authorize the collection and pledging of the revenues and earnings of the storm-water authority for the payment of such bonds or obligations and to authorize the execution of resolutions and trust indentures to secure the payment thereof and to define the rights of the holders of such bonds or obligations; to provide that no debt of Gwinnett County or any municipality in Gwinnett County shall be incurred in the exercise of any of the powers granted by this Act; to make the bonds or obligations of the storm-water authority exempt from taxation; to authorize the issuance of refunding bonds or obligations; to fix the venue or jurisdiction of actions relating to any provisions of this Act and to provide that such bonds or obligations be validated as authorized by Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law;" to provide for liberal construction; to provide for severability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Short title.

This Act shall be known and may be cited as the "Gwinnett County Storm-water Authority Act."

**SECTION 2.**

## Gwinnett County Storm-water Authority.

(a) There is created a body corporate and politic to be known as the Gwinnett County Storm-water Authority, which shall be deemed to be a political subdivision of the State of Georgia and a public corporation by that name, style, and title and such body may contract and be contracted with, sue and be sued, implead and be impleaded, and complain and defend in all courts of law and equity, except that the storm-water authority or the trustee acting under the trust indenture shall in no event be liable for any torts committed by any of the officers, agents, or employees of the storm-water authority. The storm-water authority shall make rules and regulations for its own government. It shall have perpetual existence. The storm-water authority is granted the same exemptions and exclusions from taxes as are now granted to cities and counties for the operation by the storm-water authority as provided under the provisions of this Act.

(b) The storm-water authority shall consist of seven members who shall be resident freeholders of Gwinnett County and who shall either have scientific training or have demonstrated experience with storm-water issues. Five of the members of the storm-water authority, members 1 through 5, inclusive, shall be selected at large and appointed by the Board of Commissioners of Gwinnett County. The Board of Commissioners of Gwinnett County, by a majority vote and for cause, may remove any of members 1 through 5, inclusive, before the expiration of that member's term. Two members of the storm-water authority, members 6 and 7, shall be nominated by the majority vote of a committee composed of the mayor of each incorporated municipality that has agreed for Gwinnett County to provide storm-water services within its boundaries and shall be appointed to the storm-water authority by the Board of Commissioners of Gwinnett County. The initial terms of office of members 1, 3, 5, and 7 shall be from their date of appointment until December 31, 2009, and until their respective successors are selected and qualified. The initial terms of office of members 2, 4, and 6 shall be from their date of appointment until December 31, 2008, and until their respective successors are selected and qualified.

(c) Thereafter, all members selected and appointed shall serve for a term of four years and until their successors shall have been selected and appointed. Immediately after such appointments, the members of such storm-water authority shall enter upon their duties. Any vacancy on the storm-water authority shall be filled in the same manner as was the original

appointment of the member whose termination of membership resulted in such vacancy and the person so selected and appointed shall serve for the remainder of the unexpired term. The storm-water authority shall elect one of its members as chairperson and another of its members as vice chairperson and it may also elect a secretary and treasurer, who do not necessarily have to be members of the storm-water authority and, if not members, they shall have no voting rights. Four of seven members of the storm-water authority shall constitute a quorum. No vacancy on the storm-water authority shall impair the right of the quorum to exercise all the rights and perform all the duties of the storm-water authority. The members of the storm-water authority may be compensated as determined by the governing body of Gwinnett County; however, it is expressly provided that they shall be reimbursed for all actual expenses incurred in the performance of their duties.

(d) The storm-water authority shall conduct or cause to be conducted an annual audit of the financial affairs, books, and records of the storm-water authority.

(e) The storm-water authority shall be subject to all of the provisions of Chapters 14 and 18 of Title 50 of the O.C.G.A., the open meetings and open records laws of the State of Georgia.

(f) Each member of the storm-water authority shall, not later than March 31 of each year, submit to the Board of Commissioners of Gwinnett County a financial disclosure identical to that required of public officers by Code Section 21-5-50 of the O.C.G.A., as now or hereafter amended.

### **SECTION 3.**

#### **Definitions.**

As used in this Act, the terms:

(1) "Cost of the project" shall embrace the cost of construction; the cost of all lands, properties, rights, easements, and franchises acquired; the cost of all machinery and equipment; financing charges and interest prior to and during construction and for one year after completion of construction; cost of engineering, architectural, fiscal, and legal expenses and of plans and specifications and other expenses necessary or incident to determining the feasibility or practicability of the project; administrative expenses and such other expenses as may be necessary or incident to the financing authorized by this Act; the construction of any project; and the placing of the same in operation. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as a part of the cost of the project and may be paid or reimbursed as such out of the proceeds of revenue bonds issued under the provisions of this Act for such project.

(2) "Project" means and includes the acquisition, engineering, construction, equipping, maintenance, operation, repair, and replacement of storm-water management systems and facilities useful and necessary for the collecting of storm water, and the treatment and release of storm water of any and every type, and additions and improvements to and extensions of such facilities so as to assure an adequate storm-water system.

(3) "Revenue bonds," "bonds," or "obligations" as used in this Act shall mean revenue bonds as defined and provided for in Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law," and such type of obligations may be issued by the storm-water authority as authorized under the "Revenue Bond Law" and any amendments thereto and, in addition, shall also mean obligations of the storm-water authority the issuance of which are specifically provided for in this Act.

(4) "Storm-water authority" means the Gwinnett County Storm-water Authority created in Section 2 of this Act.

(5) "Storm-water management systems and facilities" or "Gwinnett County's Municipal Separate Storm Sewer System" shall mean those natural and manmade channels, swales, ditches, rivers, streams, creeks, branches, reservoirs, ponds, drainageways, inlets, catch basins, pipes, headwalls, storm drains, curbs and gutters, lakes and other physical works, properties, and improvements which transfer, control, convey, or otherwise influence either the movement of storm-water runoff or water quality, which are either owned by the county or over which the county has accepted an offer of dedication of an easement or other legally binding permanent right of use for storm-water drainage and for which the county has the obligation of maintenance for storm-water drainage purposes.

#### **SECTION 4.**

##### **Powers.**

The storm-water authority may have the following powers:

- (1) To have a seal and alter the same at its pleasure;
- (2) To acquire by purchase, lease, gift, or otherwise, and to hold, maintain, lease, operate, and dispose of real and personal property of every kind and character for its corporate purposes;
- (3) To acquire in its own name by purchase, on such terms and conditions and in such manner as it may deem proper, real property, or rights or easements therein or franchises necessary or convenient for its corporate purposes, and to use the same so long as its corporate existence shall continue and to lease or make contracts with respect to the use of

or to dispose of the same in any manner it deems to be to the best advantage of the storm-water authority, and no property shall be acquired under the provisions of this Act upon which any lien or other encumbrance exists, unless at the time such property is so acquired a sufficient sum of money is deposited in trust to pay and redeem the fair value of such lien or encumbrance; and, if the storm-water authority shall deem it expedient to construct any project on any lands the title to which shall then be in Gwinnett County or in any municipality incorporated in Gwinnett County, the governing authority or body of Gwinnett County or of any of such municipalities, if the governing authority of Gwinnett County or of any of such municipalities consents thereto, is authorized to convey title to such lands to the storm-water authority upon payment for the credit of the general funds of Gwinnett County or such municipalities the reasonable value of such lands. Notwithstanding anything to the contrary contained in this Act, the storm-water authority shall have the right, easement, and franchise for storm-water management systems and facilities within the rights of way of streets, roads, and highways in Gwinnett County or within the rights of way of streets, roads, and highways in the corporate limits of any municipality incorporated in Gwinnett County, without cost except that the storm-water authority shall repair all damage done by the storm-water authority by reason thereof;

(4) To appoint, select, and employ officers, agents, and employees, including engineering, architectural, and construction experts, fiscal agents, and attorneys, and fix their respective compensations;

(5) To make and execute contracts, leases, and instruments that shall be necessary or convenient, including contracts for acquisition and construction of projects and leases of projects or contracts with respect to the use of projects that it causes to be constructed or acquired; and any and all persons, firms, and corporations, and the state and any and all political subdivisions, departments, institutions, or agencies of the state are authorized to enter into contracts, leases, or agreements with the storm-water authority upon such terms and for such purposes as they deem advisable; and, without limiting the generality of the above, authority is specifically granted to municipal corporations, counties, and other political subdivisions and to the storm-water authority to enter into contracts, lease agreements, or other undertakings relative to the furnishing of services and facilities by the storm-water authority to such municipal corporations, counties, and political subdivisions for a term not exceeding 50 years;

(6) To construct, erect, acquire, own, repair, remodel, maintain, add to, extend, improve, equip, operate, and manage and maintain projects, as defined in this Act; the cost of any such project to be paid in whole or in part from the proceeds of revenue bonds or other

funds of the storm-water authority or from such proceeds or other funds and any grant from the United States of America or any agency or instrumentality thereof or from the State of Georgia or any agency or instrumentality thereof or from any entity created pursuant to the Georgia Nonprofit Corporation Code, Chapter 3 of Title 14 of the O.C.G.A., or recognized as a non-profit entity in accordance with applicable provisions of the Internal Revenue Code;

(7) To accept loans and grants of money or materials or property of any kind from the United States of America or any agency or instrumentality thereof, upon such terms and conditions as the United States of America or such agency or instrumentality may impose;

(8) To accept loans and grants of money or materials or property of any kind from the State of Georgia or any agency or instrumentality or political subdivision thereof, upon such terms and conditions as the State of Georgia or such agency or instrumentality or political subdivision may impose;

(9) To borrow money for any of its corporate purposes and to execute notes or other evidences of such indebtedness and to secure the same;

(10) To issue negotiable revenue bonds payable solely from funds pledged for the purpose, and to provide for the payment of the same and for the rights of the holders thereof;

(11) To exercise any power usually possessed by private corporations performing similar functions, including the power to incur short-term debt and to approve, execute, and deliver appropriate evidence of any such indebtedness, provided that such power is not in conflict with the Constitution and laws of this state;

(12) To issue revenue bonds or obligations pursuant to and in conformity with Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law;" and

(13) To do all things necessary or convenient to carry out the power expressly given in this Act.

## **SECTION 5.**

Revenue bonds; form; denomination; registration; place of payment.

The storm-water authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest thereof, which may be at any bank or trust company inside or outside the state. The bonds may be issued in coupon or registered form or both as the storm-water authority may determine and provision may be

made for the registration of any coupon bond as to principal alone and also as to both the principal and interest.

#### **SECTION 6.**

Revenue bonds; signatures; seal.

All such bonds shall bear the manual or facsimile signature of the chairperson of the storm-water authority, attested by the manual or facsimile signature of the secretary of the storm-water authority, and the official seal of the storm-water authority or a facsimile thereof shall be affixed thereto and any coupons attached thereto shall bear the facsimile signatures of the chairperson and secretary of the storm-water authority. Any coupon may bear the facsimile signatures of such persons and any bond may be signed, sealed, and attested on behalf of the storm-water authority by such person as at the actual time of the execution of such bonds shall be duly authorized or hold the proper office, although at the date of such bonds such persons may not have been so authorized or shall not have held such office. In case any officer whose signature shall appear on any bonds or whose signature shall appear on any coupon shall cease to be such officer before delivery of such bonds, such signature shall nevertheless be valid and sufficient for all purposes the same as if he or she had remained in office until such delivery.

#### **SECTION 7.**

Revenue bonds; negotiability; exemption from taxation.

All revenue bonds issued under the provisions of this Act shall have and are declared to have all the qualities and incidents of negotiable instruments under laws of this state. Such bonds are declared to be issued for an essential public and governmental purpose and such bonds and the income thereof shall be exempt from all taxation within the state.

#### **SECTION 8.**

Revenue bonds; sale; proceeds.

The storm-water authority may sell such bonds in such manner and for such price as it may determine to be for the best interest of the storm-water authority, and the proceeds derived from the sale of such bonds shall be used solely for the purpose provided in the proceedings authorizing the issuance of such bonds.

**SECTION 9.**

Revenue bonds; interim receipts and certificates or temporary bonds.

Prior to the preparation of definitive bonds, the storm-water authority may under like restrictions issue interim receipts, interim certificates, or temporary bonds, with or without coupons exchangeable for definitive bonds upon the issuance of the latter.

**SECTION 10.**

Revenue bonds; replacement of lost or mutilated bonds.

The storm-water authority may also provide for the replacement of any bond or any coupons that shall become mutilated or be destroyed or lost.

**SECTION 11.**

Revenue bonds; conditions precedent to issuance.

Such revenue bonds shall be issued as required by Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law." Any resolution providing for the issuance of revenue bonds under the provisions of this Act shall become effective immediately upon passage; and any such resolution may be passed at any regular or special or adjourned meeting of the storm-water authority by a majority of its members.

**SECTION 12.**

Credit not pledged.

Revenue bonds issued under the provisions of this Act shall not constitute a debt of Gwinnett County or any municipality in Gwinnett County, nor a pledge of the faith and credit of Gwinnett County or any such municipality, but such bonds shall be payable solely from the fund provided for in this Act and the issuance of such revenue bonds shall not directly, indirectly, or contingently obligate Gwinnett County or any such municipality to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment, and all such bonds shall contain recitals on their face covering substantially the foregoing provisions of this section.



**SECTION 13.**

## Trust indenture as security.

In the discretion of the storm-water authority, any issue of such revenue bonds may be secured by a trust indenture by and between the storm-water authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company inside or outside of the state. Such trust indenture may pledge or assign fees, tolls, revenues, and earnings to be received by the storm-water authority. Either the resolution providing for the issuance of revenue bonds or such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the storm-water authority in relation to the acquisition of property, the construction of the project, the maintenance, operation, repair, and insurance of the project, and the custody, safeguarding, and application of all moneys, and may also provide that any project shall be constructed and paid for under the supervision and approval of consulting engineers or architects employed or designated by the storm-water authority, and may also contain provisions concerning the conditions, if any, upon which additional revenue bonds may be issued. It shall be lawful for any bank or trust company incorporated under the laws of this state to act as such depository and to furnish such indemnifying bonds or pledge such securities as may be required by the storm-water authority. Such indenture may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations. In addition to the foregoing, such trust indenture may contain such other provisions as the storm-water authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out such trust indenture may be treated as a part of the cost of maintenance, operation, and repair of the project affected by such indenture.

**SECTION 14.**

## To whom proceeds of bonds shall be paid.

The storm-water authority shall, in the resolution providing for the issuance of revenue bonds or in the trust indenture, provide for the payment of the proceeds of the sale of the bonds to any officer or person who or any agency, bank, or trust company that shall act as trustee of

such funds and shall hold and apply the same to the purposes provided for in this Act, subject to such regulations as this Act and such resolution or trust indenture may provide.

## **SECTION 15.**

### **Sinking fund.**

The revenues, fees, tolls, and earnings derived from any particular project or projects, regardless of whether or not such fees, earnings, and revenues were produced by a particular project for which bonds have been issued unless otherwise pledged and allocated, may be pledged and allocated by the storm-water authority to the payment of the principal and interest on revenue bonds of the storm-water authority as the resolution authorizing the issuance of the bonds or in the trust instrument may provide, and such funds so pledged from whatever source received, which pledge may include funds received from one or more or all sources, shall be set aside at regular intervals as may be provided in the resolution or trust indenture into a sinking fund, which sinking fund shall be pledged to and charged with the payment of:

- (1) The interest on revenue bonds as such interest shall fall due;
- (2) The principal of the bonds as the same shall fall due;
- (3) Any premium upon bonds acquired by redemption, payment, or otherwise;
- (4) The necessary charges of the paying agent or agents for paying principal and interest;
- and
- (5) Any investment fees or charges.

The use and disposition of such sinking fund shall be subject to such regulations as may be provided in the resolution authorizing the issuance of the revenue bonds or in the trust indenture, but, except as may otherwise be provided in such resolution or trust indenture, such sinking fund shall be maintained as a trust account for the benefit of all revenue bonds without distinction or priority of one over another. Subject to the provisions of the resolution authorizing the issuance of the bonds or in the trust indenture, any surplus moneys in the sinking fund may be applied to the purchase or redemption of bonds and any such bonds so purchased or redeemed shall forthwith be canceled and shall not be reissued, printed, or delivered.

**SECTION 16.**

## Remedies of bondholders.

Any holder of revenue bonds issued under the provisions of this Act or any of the coupons appertaining thereto, and the trustee under the trust indenture, if any, except to the extent the rights given by this Act may be restricted by resolution passed before the issuance of the bonds or by the trust indenture, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of the State of Georgia or granted by this Act or under such resolution or trust indenture, and may enforce and compel performance of all duties required by this Act or by such resolution or trust indenture, to be performed by the storm-water authority, or any officer thereof, including the fixing, charging, and collecting of revenues, fees, tolls, fines, and other charges for the use of the facilities and services furnished.

**SECTION 17.**

## Refunding bonds.

The storm-water authority is authorized to provide by resolution for the issuance of bonds of the storm-water authority for the purpose of funding or refunding any revenue bonds issued under the provisions of this Act and then outstanding, together with accrued interest thereon and premium, if any. The issuance of such funding or refunding bonds, the maturities and all other details thereof, the rights of the holders thereof, and the duties of the storm-water authority with respect to the same shall be governed by the foregoing provisions of this Act insofar as the same may be applicable.

**SECTION 18.**

## Venue and jurisdiction.

Any action to protect or enforce any rights under the provisions of this Act or any suit or action against the storm-water authority shall be brought in the Superior Court of Gwinnett County, Georgia, and any action pertaining to validation of any bonds issued under the provisions of this Act shall likewise be brought in such court, which shall have exclusive, original jurisdiction of such actions.

**SECTION 19.**

## Validation.

Bonds of the storm-water authority shall be confirmed and validated in accordance with the procedure of Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law;" the petition for validation shall also make party defendant to such action the State of Georgia or any municipality, county, authority, political subdivision, or instrumentality of the State of Georgia that has contracted with the storm-water authority for the services and facilities of the project for which bonds are to be issued and sought to be validated and the state or such municipality, county, authority, political subdivision, or instrumentality shall be required to show cause, if any, why such contractor contracts and the terms and conditions thereof shall not be inquired into by the court and the validity of the terms thereof be determined and the contract or contracts adjudicated as a part of the basis of the security for the payment of any such bonds of the storm-water authority. The bonds, when validated, and the judgment of validation shall be final and conclusive with respect to such bonds and the security for the payment thereof and interest thereon and against the authority issuing the same, the state and any municipality, county, authority, political subdivision, or instrumentality thereof, if a party to the validation proceedings, contracting with the Gwinnett County Storm-water Authority.

**SECTION 20.**

## Interest of bondholders protected.

(a) While any of the bonds issued by the storm-water authority remain outstanding, the powers, duties, or existence of the storm-water authority or of its officers, employees, or agents shall not be diminished or impaired in any manner that will affect adversely the interest and rights of the holders of such bonds, and no other entity, department, agency, or authority will be created that will compete with the storm-water authority to such an extent as to affect adversely the interest and rights of the holders of such bonds, nor will the state itself so compete with the storm-water authority.

(b) The provisions of this Act shall be for the benefit of the storm-water authority and the holders of any such bonds and, upon the issuance of bonds under the provisions of this Act, shall constitute a contract with the holders of such bonds.

**SECTION 21.**

Moneys received considered trust funds.

All moneys received pursuant to the authority of this Act, whether as proceeds from the sale of revenue bonds, as grants or other contributions, or as revenues, income, fees, and earnings, shall be deemed to be trust funds to be held and applied solely as provided in this Act.

**SECTION 22.**

Tort immunity.

To the extent permitted by law, the storm-water authority shall have the same immunity and exemption from liability for torts and negligence as Gwinnett County, and the officers, agents, and employees of the storm-water authority when in the performance of the work of the storm-water authority shall have the same immunity and exemption from liability for torts and negligence as the officers, agents, and employees of Gwinnett County when in performance of their public duties or work of the county.

**SECTION 23.**

Tax exempt status of storm-water authority.

The properties of the storm-water authority, both real and personal, are declared to be public properties used for the benefit and welfare of the people of the state and not for purposes of private or corporate benefit and income, and such properties and the storm-water authority shall be exempt from all taxes and special assessment of any city, county, or the state or any political subdivision thereof.

**SECTION 24.**

Billing and collection.

The storm-water authority shall include the rates, fees, tolls, and charges for the services, facilities, or commodities furnished by the authority on the general tax bill issued by the county. Said rates, fees, tolls, and charges levied to pay the cost of such storm-water services, facilities, and commodities shall be collected by the Gwinnett County Tax Commissioner in the same manner as taxes are collected. The storm-water authority shall

have no authority to set rates, fees, tolls, or charges and any rate, fee, toll, or charge levied shall first be approved by the Board of Commissioners of Gwinnett County.

#### **SECTION 25.**

Powers declared supplemental and additional.

The foregoing sections of this Act shall be deemed to provide an additional and alternative method for the doing of the things authorized by this Act and shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as in derogation of any powers now existing. This Act does not in any way take from Gwinnett County or any municipality located therein or any adjoining county the authority to own, operate, and maintain a storm-water sewerage system or to issue revenue bonds as is provided by Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law."

#### **SECTION 26.**

Liberal construction of Act.

This Act being for the welfare of various political subdivisions of the State of Georgia and their inhabitants shall be liberally construed to effect the purposes hereof.

#### **SECTION 27.**

Severability.

In the event any section, subsection, sentence, clause, or phrase of this Act shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, subsections, sentences, clauses, or phrases of this Act, which shall remain of full force and effect as if the section, subsection, sentence, clause, or phrase so declared or adjudged invalid or unconstitutional were not originally a part hereof. The General Assembly declares that it would have passed the remaining parts of this Act if it had known that such part or parts hereof would be declared or adjudged invalid or unconstitutional.

**SECTION 28.**

Repealer.

All laws and parts of laws in conflict with this Act are repealed.